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June 30, 2008

Via Electronic Submission

Mr. Donald S. Clark, Secretary
Federal Trade Commission
Room H-135 (Annex S)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Rebuttal to Comments # 535221-00050 by the Direct Selling Association regarding the Revised Proposed Business Opportunity Rule, R511993

Dear Secretary Clark:

I am profoundly dismayed that the Federal Trade Commission ("FTC') has bowed to pressure by the Direct Selling Association ("DSA") to exempt multi-level marketing ("MLM") companies from the scope of the Proposed Business Opportunity Rule. Not surprisingly, the DSA disingenuously purports to be the very thing that it is NOT: a representative of "legitimate direct sellers." As protector of the public interest, the FTC should consider why an organization by this name is so anxious to exempt MLMs, whose tactics bear little resemblance to legitimate direct sales.

In its Comments #535221-00050, the DSA applauds the FTC for acknowledging that "the [April 2006 proposed rule] would have unintentionally swept in numerous commercial arrangements where there is little or no evidence that fraud is occurring [and that] the [proposed rule] would have imposed greater burdens on the MLM industry than other types of business opportunity sellers without sufficient countervailing benefits to consumers." The two components of this misinformed statement are that: (1) there is little evidence of fraud in the MLM industry, and (2) MLMs would be unfairly burdened by meaningful disclosure to prospects before they sign.

In my opinion, there is ample evidence of fraud within the MLM industry. Four physicians in our group became entangled with one particular MLM that manufactures nutritional supplements and has cleverly identified as its primary target physicians and physician practices. We are one of many physician "distributors" of this MLM in our area, and most us failed miserably in our ventures despite our best efforts. The four physicians in our group paid out a total of approximately $800,000 for initial inventory and shipping costs. We stand to lose the vast majority of that money, even after accounting for the small amount of products we have sold.

The salient point is that even well-educated doctors, who are supposedly knowledgeable about business, can fall under the spell of the techniques used by MLMs. During our courtship by this MLM, we were slowly blinded by the one-sided sales pitches, the upbeat promises of "residual income," and the crafted assertions that this "opportunity" represents the answer to declining physician reimbursements and the rising costs of medical practice. The truth is that very few distributors ever profit from these ventures. If there had been SOME balance in the form of meaningful disclosure rules in place for MLMs (such as required earnings statements of how others were actually doing in the business, disclosure of legal actions and a list of references) we would have never become involved in such a disadvantageous scheme.

With respect to the second point, the DSA has apparently convinced the FTC that MLMs are small companies running on shoestring budgets, and that disclosure requirements would represent an undue financial burden. This fanciful notion of MLMs as "Mom 'n Pop" companies is laughable. As demonstrated by the losses suffered by our group, there is HUGE money in MLMs, and the majority of it flows directly into the companies' coffers. Our MLM has boasted of becoming "the next billion dollar company," and it may very well succeed on the backs of an endless chain of recruits duped into believing they can make money by recruiting more recruits. Our MLM spares no expense at recruiting. It rents plush downtown hotels in various major cities, where principals of the company mesmerize otherwise intelligent people – physicians and laypeople – into believing that this "opportunity" represents the promise of easy retirement.

Meaningful disclosure requirements would NOT represent an undue financial burden for MLMs. The truth is that MLMs are simply afraid that meaningful disclosure would hurt their chances of recruiting new prospects, and therefore ask that the FTC not require it. This is like the mugger who appeals to authorities not to install street lamps, because to do so would hurt his business.

Finally, I would like to address the DSA's assertion that Section 5 of the FTC Act provides adequate relief for victims of schemes that are truly illegal. As I read more about the protections the FTC Act provides, I now genuinely believe that certain tactics used by our MLM may indeed run afoul of existing law. For example, in a glossy company magazine designed to impress new prospects with the potential profitability of the MLM's distributorships, several physicians from our area were listed as "Top Producers." One was a doctor in our group, and beside her name was the sizeable sum of money she had allegedly "produced." The suggestion, of course, was that she had actually SOLD this amount of product to end users at a profit. In reality, what this significant sum represented was the amount of product she had personally purchased from the company to get in at the highest level. To date, she has been unable to sell the vast majority of these products to ANYONE. In other words, what was lauded as a great source of profit and a great success actually represented a huge loss and a regrettable failure.

Can the FTC assure me that it would commit the resources to investigate and/or prosecute such a claim if the full facts were brought to its attention? I submit that it makes more sense to prevent these situations by providing for meaningful disclosure for MLMs in the final rule, and I ask that the FTC reconsider its position on this matter.

In conclusion, I concur with the entirety of the rebuttal statement submitted by Jon M. Taylor, MBA, PhD., of the Consumer Awareness Institute and Pyramid Scheme Alert, in his Comments # 535221-00091.

Thank you for your attention to this matter.

Sincerely,

Lawrence E. Harkenrider